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Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, which is submitted pursuant to Human Rights Council resolution 8/12.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The present report is submitted to the General Assembly in accordance with Human Rights Council resolution 8/12 and covers the period from 1 October 2008 to 30 September 2009.

The report is divided into four sections. Section I contains the introduction, while section II outlines the activities, including conferences and consultations, undertaken by the Special Rapporteur in the discharge of her mandate during the period under review.

Section III deals with the main thematic focus of the report, namely, the identification and protection of and assistance to victims of trafficking. The section contains case narratives of trafficked victims and a separate examination of applicable standards and practices, including the roles and responsibilities of States and of non-State actors in addressing the situation of victims of trafficking. It focuses on a child-centred approach to children who are victims of trafficking and on issues of protection of and assistance to victims of trafficking, especially those in vulnerable situations, such as refugees, asylum-seekers, returnees and stateless and internally displaced persons.

Section IV contains conclusions and recommendations for effectively identifying, protecting and providing direct assistance to persons victims of trafficking, including a recommendation for the development of operational guidelines, procedures and tools for the identification of such victims, based on existing models developed in particular by United Nations agencies and programmes.

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I. Introduction

1. The present report is the first submitted to the General Assembly by the Special Rapporteur on trafficking in persons, especially in women and children, pursuant to Human Rights Council resolution 8/12. It highlights the activities undertaken by the Special Rapporteur during the period from 1 October 2008 to 30 September 2009, including the three country visits conducted in 2009. The main thematic focus of the report is the identification, protection of and assistance to victims of trafficking.

2. In preparing the report, the Special Rapporteur consulted a wide range of civil society and international organizations working in this field, such as the International Organization for Migration (IOM), the International Labour Organization (ILO), the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC).

II. Activities of the Special Rapporteur

Participation in conferences and consultations

3. Since her appointment in June 2008 and assumption of duties on 1 August 2008, the Special Rapporteur has actively consulted and cooperated with organizations and bodies relevant to her mandate. From 6 to 10 October 2008, the Special Rapporteur held initial consultations in Geneva with representatives of the Committee on the Rights of the Child, numerous permanent missions, ILO, IOM and non-governmental organizations. She also held a telephone conference with the United Nations Office on Drugs and Crime. In October 2008, the Special Rapporteur circulated a questionnaire in English, French and Spanish to all Member States to gather some baseline information on the problem of human trafficking.

4. Thereafter, the Special Rapporteur participated in a variety of consultations and events, particularly focusing on regional cooperation in Africa. From 8 to 12 November 2008, the Special Rapporteur participated in the forty-fourth ordinary session of the African Commission on Human and Peoples' Rights, taking part in a number of events, including initiating and working alongside other stakeholders on a resolution to combat human trafficking in Africa. She also presented a paper on human rights and human trafficking in Africa at an event of the Network of African National Human Rights Institutions and West African National Human Rights Institutions, hosted in Abuja on 10 November 2008 by the National Human Rights Commission and the Open Society Initiative for West Africa.

5. On 21 and 22 November 2008, the Special Rapporteur participated in a regional consultation on Africa, organized in Nairobi by the Global Alliance Against Trafficking in Women, on building and expanding connections towards promoting the human rights of trafficked and migrant persons in Africa.

6. From 25 to 28 November 2008, she participated in the Third World Congress against Sexual Exploitation of Children and Adolescents in Rio de Janeiro, a gathering of more than 3,000 people from five continents, 300 of whom were adolescents. She acted as moderator of a high-level panel of experts which discussed forms of commercial sexual exploitation and its new scenarios, and

participated in several workshops, including one on the implementation of the human rights-based approach to combating trafficking of children.

7. From 7 to 11 December 2008, the Special Rapporteur held consultations in New York with a wide range of stakeholders relevant to her mandate. She met with the Human Rights Watch team working on trafficking issues and with the Steering Committee of the New York State Anti-Trafficking Coalition. She met a number of stakeholders concerned with the interlinkage between sex work and trafficking, in particular as it relates to the recently increased global attention directed towards combating trafficking in the sex industry. The Special Rapporteur also met with representatives of Equality Now, based in New York, and the Polaris Project, based in Washington, D.C. On 9 and 10 December, she participated in a briefing of experts and in a round table on human trafficking, sexual rights, sex work and health organized by the Public Health Program of the Open Society Initiative, during which she met stakeholders from India, Cambodia, Germany, Brazil, Kyrgyzstan, Poland, Thailand and the United States of America.

8. On 3 and 4 February 2009, the Special Rapporteur participated in a conference on the theme "International migration and human trafficking: maximizing benefits, overcoming challenges", convened by the Commonwealth Parliamentary Association at the Houses of Parliament in London and delivered a keynote speech.

9. On 2 and 3 March, the Special Rapporteur participated in an international conference on the theme "Human trafficking at the crossroads", held in Bahrain. The conference focused on the exercise by public-private partnerships of a leadership role in tackling human trafficking.

10. On 6 March, the Special Rapporteur participated in a panel discussion convened during the fifty-third session of the Commission on the Status of Women, on special procedures of the Human Rights Council and women's rights. The Special Rapporteur addressed non-governmental organizations involved in the work of the Commission and discussed the human rights implications of human trafficking, as well as her mandate and key areas of work. On the same day, the Special Rapporteur participated in a series of events organized by the Coalition Against Trafficking in Women, and attended film shows on trafficking, prostitution and pornography.

11. On 12 March, the Special Rapporteur presented her first annual report to the Human Rights Council at its tenth session (A/HRC/10/16 and Corr.1). The report provided a global perspective to the human trafficking phenomenon, its trends, forms and manifestations, including the challenges relating to lack of coherent and reliable statistical information that captures the various dimensions of the problem, and addressed the scope of her mandate. The report also examined the legal and policy framework for combating human trafficking at the international, regional and national levels and set out the vision, agenda and working methods of the Special Rapporteur for carrying out her mandate. In the report, the Special Rapporteur stressed the importance of comprehensive action to combat human trafficking, based on five Ps (protection, prosecution, punishment, prevention and promotion of international cooperation) and three Rs (redress, rehabilitation and reintegration of victims).

12. On 13 March, the Special Rapporteur participated in a side event held during the tenth session of the Human Rights Council, which was organized jointly with the

Permanent Missions of the Philippines and Germany to the United Nations. At that event, the Special Rapporteur addressed the challenges and the way forward in applying human rights to the fight against human trafficking.

13. From 20 to 23 April, the Special Rapporteur was in London at the invitation of the Mayor of London, Boris Johnson, to participate in the launch of the Mayor's strategy to eradicate violence against women, entitled "The way forward: a call for action to end violence against women". The Special Rapporteur also took part in a round table on preventing human trafficking in relation to the 2012 Olympic Games. The visit also provided the Special Rapporteur an opportunity to become acquainted with a number of non-governmental organizations and service providers for victims of trafficking and violence against women and to interact with police officers working as part of the Operation Maxim Human Trafficking Team, based at New Scotland Yard. Non-governmental organizations met with during the visit included Nia Project and Refuge, Africans Unite against Child Abuse, Poppy Project, Tower Hamlets Women's Aid and The Haven, Whitechapel. The Special Rapporteur was impressed by the political leadership and the very close partnership between government and non-governmental organizations in providing services, support and referrals to victims of violence, including victims of human trafficking.

14. On 13 May, the Special Rapporteur participated in the thematic dialogue of the General Assembly on taking collective action to end human trafficking, which focused on a global plan of action to combat human trafficking. In her presentation, the Special Rapporteur advocated renewed collective action for combating human trafficking through the consideration and adoption of a global plan of action that would increase international cooperation and accountability under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and become a platform for galvanizing the much-needed political and economic will to fast track regional and national plans of action.

15. As part of the efforts to pursue more collaborative strategies that would effectively combat human trafficking, the Special Rapporteur participated in a joint consultative workshop convened from 24 to 26 June with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, in which relevant United Nations and non-governmental partners also participated. Given the nature of the three mandates and the need to avoid overlap, the consultative workshop discussed methods of work, including possible joint activities, and explored practical tools for collaboration with partners.

16. From 29 June to 3 July, the Special Rapporteur participated in the sixteenth annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups of the Human Rights Council, held in Geneva. The meeting addressed a variety of issues of concerns to special rapporteurs, including the effectiveness of the special procedures and common approaches to human rights situations.

Planned activities

17. At the time of writing, the Special Rapporteur plans to participate in a high-level panel at an international conference on violence against women, to be held under the auspices of the Group of Eight in Rome on 9 and 10 September 2009. She

will also attend an international conference on the prevention of modern slavery, to be organized by the Organization for Security and Cooperation in Europe in Vienna on 14 and 15 September 2009.

Country visits

18. In May 2009, the Special Rapporteur made official visits to Belarus and Poland to assess the human rights perspectives of approaches to combating human trafficking in the two neighbouring countries and to explore the cooperative initiatives of both countries in combating and preventing human trafficking. In July, the Special Rapporteur visited Japan.

Belarus

19. At the invitation of the Government, the Special Rapporteur visited Belarus from 18 to 24 May. The Special Rapporteur was very impressed by the political commitment demonstrated at the highest level to combat all forms of human trafficking in Belarus, in cooperation with bordering countries and concerned organizations. She noted some commendable good practices in relation to compensation for victims of human trafficking and the establishment of an international training centre on human trafficking and migration.

20. Nevertheless, there were some areas of concern, including:

(a) The need to provide holistic, reintegrative and rehabilitative assistance to victims of trafficking. The emphasis has been on prosecution which, although important, is not the only solution, hence the importance of protecting the human rights of victims;

(b) The root causes of trafficking were not being sufficiently addressed;

(c) The increase in cases of trafficking of men for purposes of labour exploitation;

(d) The need to ensure that anti-trafficking measures do not violate people's human rights. Special care should be taken to ensure a proper balance of measures that will combat trafficking and protect the human rights of every individual.

Poland

21. At the invitation of the Government, the Special Rapporteur visited Poland from 24 to 29 May. At the end of her visit, the Special Rapporteur noted that the scale of trafficking in persons is not only a serious concern in Poland but has been somewhat aggravated in the past five years by virtue of its joining the European Union and also becoming part of the Schengen area. These developments unarguably helped to transform Poland from being primarily a source country to clearly becoming both a transit and destination country. Endemic forms of trafficking include but are not limited to trafficking for purposes of labour exploitation and of prostitution and other forms of sexual exploitation. The Special Rapporteur noted evidence that the Government of Poland is making good progress in combating human trafficking, working closely with stakeholders and by means of international cooperation, especially with border countries, and closely cooperating

with and assisting non-governmental organizations which provide social services to victims of trafficking.

22. Nevertheless, there were some areas of concern, including:

(a) The lack of a comprehensive and unambiguous definition of trafficking in the criminal law;

(b) The Palermo Protocol is not self-executing and therefore requires that an additional act of legislation be implemented fully in Poland;

(c) Trafficking for purposes of labour exploitation is on the increase;

(d) Judicial proceedings relating to trafficking cases are unduly long and, on the average, last about two years;

(e) Availability and access to social assistance by victims of trafficking, especially in rural areas, are somewhat limited and victims of trafficking do not receive compensation. An award of compensation by the court is an important aspect of redressing loss of earnings, violation of human rights and harm suffered in general.

Japan

23. The Special Rapporteur visited Japan from 12 to 17 July. She observed that Japan is clearly affected as a destination country for many victims of human trafficking. While trafficking for purposes of prostitution and other forms of sexual exploitation constitutes the vast majority of the recorded cases, trafficking for purposes of labour exploitation is also of great concern. The Government of Japan, in recognition of the seriousness of the problem, has embarked upon legislative and administrative reforms which include the promotion of international cooperation with a view to combating human trafficking.

24. Despite these efforts, the Special Rapporteur identified a number of issues of immediate concern, in particular:

(a) The non-ratification of the Palermo Protocol;

(b) The unclear identification procedure which may lead to the misidentification of victims of trafficking;

(c) Inappropriate shelters and lack of comprehensive and multilingual assistance for victims of trafficking, and the lack of access by victims to redress and compensation.

25. The full report of the visits to the three countries, including detailed recommendations, will be submitted in due course to the Human Rights Council.

III. Identification and protection of and assistance to victims of trafficking

A. Case studies: critical areas of concern for victims[1]

Case 1. Testimony of a 19-year-old Filipina migrant worker trafficked for purposes of sex work in Malaysia

26. To help my parents survive poverty, I entertained the idea of working abroad. There was no chance for me to land a job locally, having no college education to speak of. Even college graduates have a hard time locating work.

27. I was recruited by a man named Joseph to work in Malaysia as a band singer, with an offer of a monthly salary of 60,000 pesos (US$ 1,260). I was recruited along with two other girls who also aspired to migrate for work. Joseph transported me in 2006 by ship and we landed in Sandakan, Malaysia, where a man named Harry met us at the port to proceed to Miri. Another Chinese man met us and collected our passports for a chop (seal) to pass through the immigration. We went to Kota Kinabalu after paying a fee. From Miri, we went by plane to Kota Kinabalu. A woman met us at the airport and we took a bus to Kuching.

28. We sang at a club; we worked but did not receive any pay. In fact, we were asked to pay our debt. The cost of travel was charged to us, including the chop fees for the passports; in addition payment was collected from us for power and water bills which were initially promised to be free.

29. When we asked for a new job with higher pay, we were given jobs as guest relation officers (a euphemism for entertainer) in Kalampai, which was illegal. We accepted the jobs because there was no way for us to pay the debts claimed by the woman, and for us to go home for good. We worked hard every night, yet we did not receive any pay for days except for a few Malaysian ringgit to buy shampoo and soap but not enough to buy food. Then we found ourselves eventually sold to various men. At the beginning, we were told that they would not force us to go out with men but later on, we were scolded if we would not go out with them. We suffered also from constant stress as we were periodically checked upon and raided by the Malaysian police. We wanted to run away but could not go because they kept our passports; we were warned that if we dared to go we would be taken to a gangster. One night the police raided a night club I was at. I was able to hide on the terrace near an air-conditioned unit where I hung clothes from the clothesline to cover myself. All of the women except me were taken and arrested. Their passports were confiscated. They were photographed. There were media reporters. My passport was surrendered by our house caretaker who thought that I had been arrested with the other women. I asked for the intervention of the Embassy of the Philippines. In fact, I called up and asked to be rescued but the Embassy just told me that there was no budget. I went to the immigration office in Kuching to get an exit pass. To my surprise, I was detained instead of being issued an exit pass. The officer took my statement of a lost passport and I declared that an agent had

[1] The studies presented are from a pool of case studies received by the Special Rapporteur at her request from stakeholders in July 2009. Two have been used for illustrative purposes, in part because of space limitations and their relevance to the thematic focus of the present report: identification, protection of and assistance to victims.

recruited me from the Philippines. I was not detained for long because my boyfriend who accompanied me paid the officer in exchange for my freedom. Immediately, my boyfriend bought a ticket for my return to the Philippines. Upon arrival in Davao in 2007, I was able to make an affidavit of complaint and produced evidence of illegal recruitment and attendant issues. With the help of the Center for Overseas Workers in Davao, I filed a case against the recruiter, but unfortunately he could not be found.[2]

* * *

30. The Special Rapporteur believes that the above-mentioned testimony demonstrates how easily the search for a better life can end badly. It also shows how closely trafficking of human beings and migration are linked, because often it is difficult economic circumstances that make people consider the option of migration and it is also poverty that makes them vulnerable to becoming victims of trafficking. This case raises issues that speak clearly to the thematic focus of the present report. First, the immigration officer was reluctant to identify her as a victim of human trafficking; second, instead of receiving the protection and assistance she deserved as a victim, she was detained; and third, her boyfriend had to bribe someone to secure her release.

Case 2. Laotian boy trafficked for purposes of forced labour in Thailand

31. Non was a fishing industry trafficker's dream. A strong boy of 17 years of age, he had just arrived in the border town of Savannakhet from his village in southern Laos. He had very little education, could barely read and write, and was supporting his mother and grandmother. Working for a small wage in a sawmill, Non met a young man who offered to take him to a well-paid job in Thailand. Non was told that Thai garment factories offered salaries of around 6,000 baht per month (US$ 170). Non said that he really needed money and because the young man was a fellow Lao, he believed and trusted him. He later admitted that his limited exposure to city life may have caused him to be vulnerable to the deceitfulness of recruiters. He thought it was completely normal to cross the river at night and had no idea it was illegal. When he reached the other side, Non boarded a van that would not open its doors to let him out until it reached the coast of Thailand, several hundred kilometres away. Stepping out of the van, he was immediately led on to a fishing trawler under the watchful eyes of men armed with guns. For two years he lived a hellish routine, working from the early morning into the darkness of night, heaving nets of fish without a rest or break. He ate and slept little on a crowded deck with 40 other men. All of them were beaten on a regular basis. Non recalled that one of the labourers next to him was beaten until he was unconscious. He recalled that he was scared but had to look away, otherwise he would have been beaten too. The boat would dock only once every six months, to replenish supplies. On one of these occasions, after two years of forced servitude, Non noticed that his guards had finally left him alone. He made his move and ran for days through the jungle, afraid that if he went along the highway his captors would find and kill him. Eventually, he broke out of the jungle into the yard of a house. The woman who lived there was tending her garden when the frightened teenager suddenly appeared and begged for her help. Non could tell that she was scared of him but he told her not to be. He told

[2] Testimony received from the Buhay Foundation for Women and the Girl Child, Philippines.

her where he was from, that he had been kidnapped to work on a fishing boat for two years, and that he was hungry, tired and wanted to go home. As he told her his story, she listened, wept and embraced him. With compassion, "Auntie", as Non affectionately calls her, fed him and gave him a bed to sleep in. The next day, Auntie put money in Non's hands and ordered a taxi to take him to the Lao Embassy in Bangkok. From there, before he knew it, he was in a car heading for the border. As he was greeted by World Vision staff at the Lao-Thai border and brought back to his village, there was only one joyful thought that crossed his mind: he was alive and would survive.[3]

* * *

32. This case reinforces the fact that men and boys are trafficked for forced labour and underscores the difficulty of identifying trafficked persons working in an industry which is not primarily viewed as a traditional place of work for trafficked victims.

33. As was rightly observed by Germany in response to the questionnaire circulated by the Special Rapporteur to Member States, a key challenge in human trafficking for purposes of labour exploitation is the identification of victims. For that purpose, Germany considered it essential that awareness be created among institutions and persons which deal with victims of such trafficking and that those institutions and persons should be provided with criteria on how to recognize victims of human trafficking.

B. Identification

34. Traffickers exploit persons who are trapped in conditions of poverty and subordinated by conditions, practices or beliefs, such as gender discrimination, gender violence and armed conflict.[4] The plight of victims, as exposed in the above-mentioned case studies, depicts the often untold hardship, abuse and cruelty that victims suffer, resulting in cumulative violations of their human rights. The proper identification of victims of trafficking is vital in providing the assistance necessary to guarantee full, or at least substantial, recovery from harm suffered and to rehabilitate and reintegrate the victim socially and economically.

35. The Special Rapporteur is concerned that States are not paying adequate attention to issues related to the proper identification and protection of and assistance to victims. Only 24 of the 86 countries respondents to the questionnaire sent to United Nations Member States by the Special Rapporteur in 2008 indicated that those issues were a priority area in the fight against human trafficking. The 24 countries were Austria, Bulgaria, Croatia, Cyprus, the Dominican Republic, Finland, France, Germany, Greece, Guatemala, Honduras, Ireland, Jamaica, Japan, Liechtenstein, Mongolia, Paraguay, Qatar, Slovakia, Slovenia, Switzerland, Thailand, the United States of America and Uzbekistan.

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[3] See World Vision Asia-Pacific, *10 Things You Need to Know about Human Trafficking*, 2009. Available at http://wvasiapacific.org/humantrafficking.

[4] Global Alliance Against Traffic in Women, Foundation Against Trafficking in Women and Global Rights, Human Rights Standards for the Treatment of Trafficked Persons (January 1999), p. 4.

36. Many victims of trafficking remain unidentified or misidentified by the authorities carrying out the screening processes. Overall, less than 30 per cent of trafficking cases is reported to the officials, both in cases of internal and cross-border trafficking. Some victims are discreetly receiving from private service providers help to overcome their trauma, such as counselling and shelter, without wanting to be identified as victims of trafficking or to turn to the authorities for help. Again, identification is hampered because sometimes the victims are not ready to share their experiences, especially with strangers and especially in cases in which they have suffered abuse or harm that is of a humiliating, dehumanizing or sexual nature, depending on their culture or moral background.

37. It is therefore pertinent to develop tools for identifying victims of trafficking. IOM, ILO, the United Nations Office on Drugs and Crime and some regional organizations have taken the lead in developing toolkits, training manuals and checklists[5] and utilizing them in the training of law enforcement officials, including labour inspectors and health and social service providers. The checklists provide objective and verifiable criteria and indicators that should be applied to help law enforcement officials and other stakeholders identify whether or not a person is a victim of trafficking.

38. In particular, the four sets of operational indicators of trafficking in human beings,[6] developed on the basis of the conclusions of a survey carried out by ILO and the European Commission in March 2009 enable identification of victims of trafficking: they refer to adults, children, sexual exploitation and labour exploitation cases. These indicators guide law enforcement officials in their efforts to identify victims and also provide clear parameters to statistics bureaux in producing national estimates on trafficking.

39. *The IOM Handbook on Direct Assistance for Victims of Trafficking*[6] outlines a methodology for the screening and identification of individuals seeking assistance as victims of trafficking. It contains a screening interview form which ensures that victims are asked all relevant questions, including how they moved or were moved

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[5] See, for example, United Nations Office on Drugs and Crime, Online toolkit to combat trafficking in persons (available at http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html); IOM, *The IOM Handbook on Direct Assistance for Victims of Trafficking*, 2007 (available at http://www.humantrafficking.org/uploads/publications/CT_20handbook_cover.pdf); United Nations Children's Fund, "Guidelines on the Protection of Child Victims of Trafficking", UNICEF Technical Notes, 2006 (available at http://www.unicef.org/russia/0610-Unicef_Victims_Guidelines_en.pdf); Office of the United Nations High Commissioner for Refugees, "Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked", 2006 (available at http://www.unhcr.org/443b626b2.html); and ILO, "Operational indicators of trafficking in human beings: results from a Delphi survey implemented by the ILO and the European Commission", March 2009 (available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publications/wcms_105023.pdf) and *Forced Labour and Human Trafficking: Handbook for Labour Inspectors*, 2008 (available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_097835.pdf). See also the Regional Policy on Protection and Assistance to Victims of Trafficking in Persons in West Africa, adopted by Ministers responsible for issues relating to trafficking in persons in countries members of the Economic Community of West African States at a meeting held in Accra on 3 April 2009.

[6] See footnote 5.

(through labour migration, recruitment, kidnapping etc.), what means were used to control them, details of the exploitation phase etc.

40. The Special Rapporteur finds these tools to be quite comprehensive and extensive in scope and excellent examples of red flags that could promote early detection, especially by trained personnel.

41. The use of such identification tools must be complemented by basic ethical principles in caring for and interviewing victims of trafficking, the most fundamental being not to harm or scare the victim, and to ensure his or her safety, privacy and confidentiality.

C. Protection

42. The Office of the United Nations High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) and the Palermo Protocol provide some good standards for the protection of victims of human trafficking. Under the OHCHR guidelines, the protection of victims in the context of criminal proceedings on trafficking includes measures that ensure that the victims are not forced to testify, or that their continuing stay in the receiving State and their obtaining other assistance is not made contingent upon their willingness to testify. Further, there is the need to provide for a reasonable period of reflection for victims to decide whether or not to cooperate in criminal proceedings.[7] The OHCHR principles state that trafficked victims shall not be detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons. On the other hand, under article 6 of the Palermo Protocol, there is a requirement for States to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

Victim-witness protection in prosecution of trafficking cases

43. Since witnesses are invariably required to secure convictions in trafficking cases and the victims are almost always the principal witnesses in such cases, the need to protect them in the prosecution of trafficking offences becomes paramount. Although the prevalence of witness harassment or intimidation is difficult to quantify, witnesses are more likely to be willing to testify if they are assured of their personal safety and security and that of their families and, in general, protected from intimidation by the accused persons or their business associates, agents or partners in crime.

44. The nature of human trafficking as an offence is such that it is usually (though not always) committed by organized criminal groups, which obviously increases the likelihood of retaliation against the victim or his or her family members. The fear and threat of harm to themselves, their families and property remain effective psychological weapons of intimidation and control of victims by their traffickers. The purpose of witness intimidation is to dissuade the victim or witness from

[7] The Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force in February 2008, requires State parties to provide for a reflection period of at least 30 days.

reporting a crime of trafficking or from cooperating with investigators or prosecutors, thereby effectively obstructing justice. Thus, the safety of witnesses, especially victims, must be given adequate attention by the criminal justice system of States. Specialized assistance is also required to deal with the trauma and associated problems faced by the victim-witness.

45. The services that should be provided as part of witness protection include but are not limited to secure and safe accommodation; relocation for reasons of safety, as may be necessary; security protection and escort to and from the court; conduct of trials in chambers; assistance in obtaining means of livelihood; free medical treatment; legal assistance and counselling services; travel expenses and subsistence allowance while acting as a witness; protection of the identity of a protected witness, thereby maintaining anonymity; and such change of identity as may be necessary for the protection of the witness and his or her immediate family members.

46. The Special Rapporteur is of the view that protection should not end when the trial process ends: victims should continue to receive post-trial monitoring and support in order to protect them from reprisal attacks by traffickers and their allies.

D. Assistance

47. A wide range of assistance can be provided to victims of trafficking, including: shelter in safe and secure accommodation; interpretation and language learning assistance; medical assistance; counselling; legal assistance; effective remedy, including compensation; family tracing; return and repatriation; reintegration in the country of origin; right to stay in the country of destination; educational, training and employment opportunities for livelihood sustainability so as to avoid the retrafficking of victims; and other follow-up and aftercare assistance with a view to their full rehabilitation and reintegration.

48. Article 6 of the Palermo Protocol deals with the provision of assistance to and protection of victims of trafficking in persons, and requires States parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of such trafficking, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance;

(d) Employment, educational and training opportunities.

49. Paragraphs 4 and 5 of article 6 further require States parties, in applying the provisions of the article, to take into account the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care, and to endeavour to provide for the physical safety of victims of trafficking in persons while within their territory.

50. The Special Rapporteur wishes to reiterate the concern often raised with States on country visits and in other consultations, that assistance to victims of trafficking should be non-conditional and not based upon their willingness to cooperate with law enforcement or to participate in trials as witnesses. States should refrain from the practice of according conditional assistance to victims and rather build their trust in deciding on the course of action to pursue.

51. The Special Rapporteur considers it necessary to highlight and briefly examine some of the services required to effectively protect and provide assistance to victims of trafficking.

Sheltering

52. An adequate shelter to examine, identify and receive victims of trafficking in persons is crucial, even from the reception phase. Safe and secure accommodation is part of the necessary and inevitable direct assistance and protection that ought to be available for victims. When a victim feels safe and secure, he or she is more likely to share his or her story and cooperate with authorities. Sheltering is sometimes carried out by State agencies directly or in collaboration with the private sector, especially non-governmental organizations. Some States fund shelters that are run by non-state institutions. IOM also runs sheltering facilities in most countries in which it has a field presence, either in partnership with government or with non-governmental organizations.

53. There are very few shelters for male victims of trafficking. While on a country visit to Belarus, the Special Rapporteur found male victims in an IOM-funded shelter, however, the shelter had no separate facility to admit men and women simultaneously and had to alternate services to either women or men at any one point in time.

54. The Special Rapporteur recommends that the period of stay in shelter, while temporary, should be at least eight weeks and must be based on the needs of each individual, with the possibility of a longer stay of six months or more. The security of sheltered victims and of the shelter facility must be paramount. Shelter service providers must be in a position to conduct referrals for victims in need of medical, legal or other forms of assistance.

Counselling

55. Counselling is an essential aspect of psychosocial support; it is advisory in nature and aimed at rebuilding the self-esteem and self-assertion that will help the victim to deal with the trauma and, especially, psychological harm suffered in the course of being trafficked. It helps in building the trust and confidence that will enable victims to make an informed choice in regard to the variety of options and services available to them. Trained counsellors usually work with trafficked victims to get their stories straight and properly documented and to determine the services or assistance required by victims. It is part of the duty of counsellors to conduct risk assessment and advise on the suitability of returning the trafficked persons to their home countries and, in the case of children, on family reunification.

56. Counselling services are sometimes required for family members in order to enable the proper reintegration of victims into their families and communities. There are various stages of counselling: pre-identification and investigation counselling;

counselling during prosecution and use of shelter; and post-counselling for victims at the integration stage and also as part of follow-up and aftercare. Counselling is a continuous process and should be tailored in accordance with the circumstances and needs of victims. Counselling may be provided through hotlines or face-to-face encounters; whatever the case, privacy and confidentiality must be maintained.

Medical and health services

57. Trafficking victims are undoubtedly exposed to a number of health risks, including but not limited to sexually transmitted infections, HIV/AIDS, unwanted pregnancy and abortion-related complications, and other health-related problems, including emotional and sleep disturbances. Some victims have been forced by the traffickers to depend on substances and have become alcoholics or drug addicts.

58. The right to health care and access to health care are protected under several international and regional human rights instruments. The International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, inter alia, recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.[8] Health-care services must meet the physical and mental needs of victims and must be offered in an atmosphere of respect, without stigmatization or discrimination. Mental health services should also be made available to victims through appropriate referrals; thus, law enforcement officials should be trained to understand the importance of health-care services for victims of trafficking.

Translation and language support

59. From the field experiences of the Special Rapporteur, translation and language support has been one of the most troubling and inadequately provided services, yet it is crucial in the rehabilitation and reintegration of victims and in their access to justice. Trafficked persons should be provided as of right with a competent, qualified translator and legal representation before and during all criminal, civil, administrative and other proceedings in which the trafficked person is a witness, complainant, defendant or other party. They must also be provided with free transcripts or copies in their own language of all documents and records related to any and such proceedings. Trafficked persons and defendants should have different translators and legal representatives. If the trafficked person cannot afford to pay, legal representation and translation should be provided without cost.[9]

60. There are several unacceptable situations in which even the sheltered victims have no means of communicating their day-to-day needs to the care providers and the others with whom they share the shelter facility. While the Special Rapporteur recognizes that the provision of language support on a daily basis may be daunting and resource-consuming, State actors and other stakeholders must endeavour to

[8] See International Covenant on Economic, Social and Cultural Rights, art. 12, Convention on Elimination of All Forms of Discrimination against Women, art. 12 and the Convention on the Rights of the Child, art. 24.

[9] Global Alliance Against Traffic in Women, Human Rights Standards (see sect. III, footnote 4), para. 10. See also International Covenant on Civil and Political Rights, art. 14, para. 3 and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18, para. 3.

ensure that victims can express themselves in their own language in reporting their victimization and telling their stories during investigation and testimony in court. Consequently, it is important to provide counselling, hotlines and other assistance in a language that the victims of trafficking in persons can understand.[10]

Legal assistance

61. As provided in the Palermo Protocol, each State party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.[11]

62. Legal assistance and representation for victims, even in civil matters, are necessary for them to seek redress and obtain justice. In appropriate cases, each State party is required under its domestic laws to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.[12]

Effective remedy

63. The right to effective remedy focuses on redress and access to justice that will ensure that the wrongs suffered by the victim are remedied, irrespective of his or her immigration status. This right is well established in international human rights law;[13] the criminal justice system must be able to prosecute and punish the traffickers while providing restorative justice to victims. Of course, compensation is part of the restorative justice that will go towards full social and economic rehabilitation of victims of trafficking in persons. Article 6, paragraph 6, of the Palermo Protocol states that "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered".

Repatriation

64. Registration is an important aspect of integration. Before victims are returned, family tracing and contacts will have been established, a process that involves relevant governmental and non-governmental organizations in the home country of the victim of trafficking in persons. Obviously, if there are fears of persecution or other repercussions, victims should not be returned but rather granted the right to remain in the destination country. A growing number of countries are providing for that option in their national immigration laws. Return must comply with international and human rights standards for cases of cross-border trafficking, and must respect the dignity and rights of victims.

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[10] Palermo Protocol, art. 6, para. 3 (b).

[11] Ibid., para. 2.

[12] Ibid., para. 1.

[13] Universal Declaration of Human Rights, arts. 6, 7 and, in particular, 8; International Covenant on Civil and Political Rights, art. 2, in particular, and art. 14; and Convention on the Elimination of All Forms of Discrimination against Women, arts. 1, 2, 15 and 16.

65. The standards to be followed by States parties in cases of repatriation are well articulated in article 8, paragraph 2, of the Palermo Protocol, which stipulates, inter alia, that when a State party returns a victim of trafficking in persons to a State party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

Reintegration

66. Reintegrative activities are aimed at ensuring the overall social and economic recovery of the victim of trafficking. Necessary assistance and support should be provided for trafficked persons who want to return or have returned to their home country or community in order to minimize the problems they face in reintegrating into their communities. After return to the country of origin or normal residence, reintegration should start earnestly through partners in the country to support the returned, trafficked victim. Follow-up and aftercare are part of the reintegrative activities that must be pursued to avoid a situation in which victims are retrafficked.[14] Where a victim remains in the receiving country, rehabilitative efforts which include educational, training and employment opportunities should be made available to the victims.

67. In addition to the measures provided for under article 6 of the Palermo Protocol, paragraph 1 of article 7 stipulates that each State party should consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

E. Child-centred approach to children who are victims of trafficking

68. Trafficking of children is common in certain regions of the world, such as Asia, Africa and the Middle East. The experience of Non (see case 2 in sect. III.A above) illustrates the vulnerability of children to trafficking. Consequently, in recognizing that child victims of trafficking need special protective measures for their well-being, survival and development, the Special Rapporteur wishes to underscore the importance of recognizing and responding to the specific vulnerability of children to trafficking and the particular harm done to child victims. To that end, it is desirable that special guidelines be developed for the identification of children who are victims or potential victims of trafficking, whether accompanied or unaccompanied. Rehabilitation, reintegration and redress programmes and activities in that regard must be child-centred and in accordance with the concept of the best interests of the child[15] and the principle of non-discrimination.[16]

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[14] As suggested to the Special Rapporteur by the Foundation for Women, Bangkok, follow-up home visits should be done only with the consent of trafficked returnees as some may not want their family members and community to know what they have been involved in, in the destination countries, for fear of stigmatization.

[15] This concept is entrenched in article 3 of the Convention on the Rights of the Child.

[16] Ibid., art. 2.

69. States have the responsibility to identify children who are victims or potential victims of trafficking by systematically monitoring the well-being of children within their territory by means of a child protection system. Improved access to education for children who are at risk of being subjected to involuntary servitude or exploitation is central to reducing their vulnerability to trafficking. National legislation, including reform of penal or criminal codes, should be done to punish trafficking, sexual and physical violence against and labour exploitation of children at the national level.

70. Ireland has a good practice regarding the child victims: once a child is identified as a victim of trafficking, he or she is immediately referred to the social work team for separated children seeking asylum.[17]

71. It is also very important that, at the point of initial contact with victims, law enforcement officials be in a position to identify the child victim and provide him or her with the necessary information and assistance, including referrals to non-governmental organizations offering specialized services. Possible warning signs that a child might be a victim or potential victim of trafficking include but are not limited to where a child travels with an adult who is not a parent or guardian, is unaware of the final destination, or is unaccompanied. Where the age of victim is uncertain and it appears that the victim might be a child, the person should be treated as such until proven otherwise by further medical assessment and verification.

72. Once a child has been identified as a victim of trafficking, the measures of protection and assistance discussed in paragraphs 42 to 67 above shall be accorded to them.[18] Child victims of trafficking should, however, be dealt with in a manner appropriate to their overall well-being, having due consideration to the child's age, physical and mental immaturity and the desirability of promoting the child's reintegration. A child in such circumstances who, by virtue of being trafficked is temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance provided by the State.[19]

73. Protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up and, as appropriate, judicial involvement.[20] The identities of child victims should be protected even in judicial proceedings and they should be dealt with in a manner different from adult victims of trafficking and should never share a shelter facility with adult victims.

74. Intercountry adoption may be considered as an alternative means for the child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;[21] where this is

[17] Child Care Act, 1991. Information provided by Ireland in response to the questionnaire circulated by the Special Rapporteur.

[18] See UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking in South-Eastern Europe, May 2003 (available from http://unicri.it/wwd/trafficking/bibliography/thb-bibl.php?au_=unicef).

[19] Convention on the Rights of the Child, art. 20.

[20] Convention on the Rights of the Child, art. 19, para. 2.

[21] Ibid., art. 21, subpara. (b).

the case, the best interests of the child shall be the paramount consideration.[22] However, according to the Committee on the Rights of the Child, adoption should not be considered where there is reasonable hope of successful tracing and family reunification.[23]

75. In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[24]

76. Importantly, States parties shall take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.[25]

F. Protection of and assistance to victims of trafficking, especially those in vulnerable situations

77. Article 14, paragraph 1, of the Palermo Protocol provides that nothing in the Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

78. The recommended principles on human rights and human trafficking[26] state that the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

79. Article 22 of the Convention on the Rights of the Child stipulates that State parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or

[22] Ibid., art. 21. Subparagraph (a) of the article requires that the adoption of a child be authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

[23] See the general comment of the Committee on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6), para. 91.

[24] Ibid., para. 26.

[25] Convention on the Rights of the Child, art. 39.

[26] The principles were developed by OHCHR in 2002 as a means of providing practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking.

domestic law and procedures, whether unaccompanied or accompanied, receives appropriate protection and humanitarian assistance.

80. It is very important to address the issue of trafficking of persons with a special vulnerability, such as refugees, asylum-seekers and stateless and internally displaced persons, in order to develop a more responsive framework. According to a report released in 2001 by ICRC, women and children make up 80 per cent of the population of refugee camps, prompting the conclusion that they flee because of their specific vulnerabilities, because they are targeted or because they fear attack.[27]

81. There is a responsibility to ensure that such categories of persons do not fall victim to trafficking and to ensure that the individuals among that group who have been trafficked or who fear trafficking have access to the asylum procedure. UNHCR deals with trafficking as it relates to such persons of concern and has developed activities specifically to prevent and respond to trafficking in such situations.[28]

82. There is encouraging evidence that some Governments have entertained and granted asylum based on a fear of trafficking.[29] It is necessary that trafficking victims or potential victims who may have a claim for refugee status obtain their right of residence in the receiving country. Interestingly, UNHCR has developed some guidance in that direction.[30]

83. As has been rightly observed in the context of refugee and displaced persons, there is little research on the number of trafficking victims who may be persons of concern to UNHCR. However, several studies have found that a growing number of refugees and internally displaced persons are at risk of trafficking.[31]

84. According to UNHCR, they often have few resources to provide for their needs and are vulnerable to the opportunities offered to them by traffickers. Many have lost the traditional family and community support networks that could potentially protect them from traffickers. Refugees are often forced to turn to criminal networks, including trafficking rings, to help them leave their homes as more and more countries adopt stricter visa and entry requirements. In addition, victims or potential victims of trafficking may have a claim to refugee status depending on the facts of their cases and UNHCR and several Governments have recognized such claims.[32]

85. The 2006 UNHCR guidelines on international protection relating to the refugee status of trafficking victims outline the personal characteristics, such as age,

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[27] See Charlotte Lindsey, *Women Facing War*, ICRC study on the impact of armed conflict on women (Geneva, 17 October 2001), p. 65. Available at http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/p0798.

[28] UNHCR Policy Development and Evaluation Service, "Review of UNHCR's efforts to prevent and respond to human trafficking" (PDES/2008/07), September 2008; available at http://www.unhcr.org/48eb2ff82.html.

[29] Ibid., p. 3.

[30] According to UNHCR guidelines addressing the issue of eligibility for refugee status of trafficking victims, the responsibility of UNHCR is to prevent persons of concern from falling victim to trafficking and to ensure that trafficking victims have access to asylum procedures and accompanying protections (UNHCR, Guidelines on International Protection No. 7; see sect. III, footnote 5).

[31] UNHCR Policy Development and Evaluation Service, "Review of UNHCR's efforts", para. 5.

[32] Ibid.

gender, appearance, physical strength, race, ethnicity, etc., that make certain persons more vulnerable to trafficking than others. It also highlights the situations in which such persons are at heightened risk of trafficking, for example, during conflict or when crossing international borders.[33]

86. UNHCR offices have provided training to stakeholders on the above-mentioned guidelines, explaining how victims or potential victims of trafficking can be eligible for refugee status.

87. Furthermore, the implementing partners of UNHCR have provided legal assistance and counselling to victims and potential victims seeking asylum on the basis of a fear of trafficking.[34]

88. ICRC is equally involved in the mapping of persons at risk and the identification of those who have already suffered harm in order to prevent trafficking and provide protection and assistance to those who have been trafficked.[35]

89. This important work of ICRC and UNHCR will help to ensure that refugees, asylum-seekers, stateless persons, internally displaced persons and returnees do not become victims of trafficking and that those persons who have fallen victim are quickly identified and offered the necessary protection and assistance, including but not limited to family reunification to avoid their being retrafficked.

IV. Conclusions and recommendations

90. **Although some very good work has been done by major stakeholders to combat trafficking by setting out criteria for identification (inter alia, ILO, IOM, United Nations Office on Drugs and Crime, United Nations Children's Fund (UNICEF), UNHCR, OHCHR, governmental organizations and non-governmental organizations), there is still ambiguity with regard to the criteria being used by many countries.**

91. **Perhaps what is more disturbing to the Special Rapporteur is that screening procedures often do not comply with the rights-based approach and sometimes woefully fail to respect the right of victims to privacy and confidentiality including voluntary agreement to cooperate with authorities in the investigation process. In some cases, victims are simply treated as criminals and are arrested and deported with no opportunity to be identified and provided with the necessary assistance as trafficked victims. Stories of the victims along with their identities often make news headlines, adding to the post-traumatic stress disorder of many victims.**

92. **Furthermore, when law enforcement officials carry out raids and rescue persons who have been forced or trafficked into prostitution, social assistance programmes for their rehabilitation and reintegration and a long-term strategy**

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[33] Ibid., para. 122.

[34] Ibid., para. 60.

[35] See Lindsey, *Women Facing War*, p. 35; and ICRC, Inter-agency Guiding Principles on Unaccompanied and Separated Children, 2004 (available at http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p1101/$File/ICRC_002_1011.PDF!Open).

for dealing with the root causes of trafficking should be in place. Case 1, discussed in section III.A of the present report, reinforces this point.

93. **Understanding the definition of trafficking and the important elements contained therein may prove fundamental for the proper identification of trafficked victims and for responding effectively to their situation. The definition of trafficking as encompassed in the Palermo Protocol underscores the fact that trafficking is a process that involves a number of interrelated actions rather than a single act at a given point in time.**

94. **The Special Rapporteur is concerned that victims of trafficking are sometimes deported without a sufficient period for recovery and reflection. The Special Rapporteur reiterates that victims should not summarily be deported. A proper repatriation process which takes into account the safety of victims must be followed. States should consider giving temporary or permanent residence permits to victims in accordance with their circumstances.**

95. **Trafficked persons should not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.**[36]

96. **The Special Rapporteur is concerned that the root causes of trafficking, namely, growing poverty, high youth unemployment, gender inequalities and the demand for cheap labour, are not being sufficiently addressed and trafficking continues to thrive as potential victims become more desperate to escape their unfavourable situations.**

97. **The current world economic crisis has further exacerbated the desperation and the quest for human security, survival and development. Trafficking for purposes of labour exploitation is likely to escalate, particularly during the current global economic crisis and in the light of increasing poverty caused by massive unemployment and the tendencies of employers to use cheap labour in order to cut costs and maximize profits. To tackle this, States should provide training, particularly for labour inspectors, that will improve understanding of the interface between migration and trafficking and enhance mechanisms for the identification of persons trafficked into exploitative labour and mixed migration situations.**

98. **Often, victims of trafficking in persons have suffered severe trauma of a physical, sexual or psychological nature and require an enabling environment and the specialized services provided by trained personnel to trust, feel safe to talk about their victimization to and assist law enforcement officials.**

99. **Administration of justice systems must be geared towards guaranteeing access to justice to victims, providing effective remedy, promoting respect for the fundamental human rights of victims, including offenders, and ensuring adequate protection and assistance to victims of trafficking in order to prevent revictimization and avoid the danger of being retrafficked.**

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[36] OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), para. 7.

100. **In view of the foregoing, the Special Rapporteur recommends the following:**

(a) **States, in close collaboration with stakeholders, should develop comprehensive but specific operational guidelines, procedures and tools for identification based on existing models, particularly those developed by IOM, ILO, UNICEF, the United Nations Office on Drugs and Crime and UNHCR, which have experience in working with trafficked victims. Such guidelines and procedures should be widely disseminated;**

(b) **Legal frameworks for the protection of victims need to be strengthened. Where countries have ratified the Palermo Protocol, they should ensure domestic application through the national constitutional and legal framework. In addition, there should be legislation on the protection of witnesses and their families, and administrative measures and practices dealing with costs borne by witnesses;**

(c) **Law enforcement officials (police, immigration, including embassy staff, staff of health and social services, and labour inspectors) should be adequately trained in respect of the national and international legal and policy framework for identification and protection of and assistance to victims, with clear emphasis on respect for the human rights of victims of trafficking. Such capacity-building should be institutionalized through the provision of regular training and retraining that is human rights, child and gender sensitive;**

(d) **Direct assistance to victims of trafficking requires resources and where the government is not providing such services, it should fund the non-governmental organizations that provide them. Men should also be seen as victims of trafficking, with an equal right to protection and assistance;**

(e) **Referral mechanisms must be in place to refer victims and potential victims to governmental and non-governmental agencies for assistance that will promote the achievement of the three Rs (rehabilitation, reintegration and redress). For such referral systems to be effective, they must be well coordinated and based on collaborative work among governments, intergovernmental agencies, law enforcement agencies, international organizations and non-governmental organizations, among others;**

(f) **International cooperation is imperative for improving protection of and assistance to victims of trafficking. To that end, bilateral and regional guidelines and procedures should be developed by States to facilitate cooperation between Governments and stakeholders, including international organizations, in the identification and provision of direct assistance;**

(g) **Governments should raise awareness of their roles in prevention and protection activities to combat trafficking. Awareness-raising will undoubtedly reduce human trafficking and help to encourage victims who would otherwise have hidden or disappeared to come forward and seek redress for wrongs suffered; this would include the maintenance of hotlines;**

(h) **States are urged to ensure adequate psychosocial, medical and legal assistance to all victims of trafficking. Inappropriate shelters, for example, placing women victims of domestic violence with victims of trafficking in the**

same facility, or children with adults who are not their family members, is not a good practice in responding to the specific needs of victims of trafficking;

(i) States should adopt asylum-sensitive, anti-trafficking legislation to deal with cases of persons in especially vulnerable situations, such as refugees, asylum-seekers and stateless and internally displaced persons. In this regard, relevant training should be organized, especially for immigration and border control officers, lawyers and judges;

(j) States are urged to introduce victim-witness protection programmes and units within the national anti-trafficking framework as part of the institutional mechanism for effectively combating trafficking;

(k) States should ensure that procedures are in place for the rapid identification of child victims of trafficking and the provision of the necessary protection and assistance consistent with the best interests of the child. States must ensure that child victims of human trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons;

(l) States should provide non-conditional assistance to victims and build their trust so that they accept the State's offer of protection and assistance.